IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 19TH SEPTEMBER 2007 / 28TH BHADRA 1929

Bail Appl..No. 5322 of 2007()

CRIME NO.167/07 OF THE MANARCAUD POLICE STATION.

PETITIONER:

ANDREW C.JOY, AGED 40,
S/O. C.A.JOY, CHIRAYIL HOUSE, OLASSA P.O.,
KOTTAYAM.

BY ADV. SRI.VARGHESE C.KURIAKOSE
3RI.PRAVEEN K. JOY
SRI.E.M.MURUGAN

RESPONDENTS: STATE AND COMPLAINANT:

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1. STATE OF KERALA,
REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

2. SUB INSPECTOR OF POLICE,
MANARCADU POLICE STATION, KOTTAYAM.

BY PUBLIC PROSECUTOR SRI.S.U. NAZAR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 19/09/2007, ALONG WITH BA NO. 5385 OF 2007 THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A. Nos. 5322 & 5385 OF 2007

Dated this the 19th day of September, 2007

ORDER

Applications for anticipatory bail. Petitioners are accused 2 and 4. They face allegations for offences punishable, inter alia, under Secs.420 and 506 read with Sec.34 of the IPC. Allegations are also raised under the Money Lenders Act. The crime has been registered on the basis of a complaint filed before the police by the de facto complainant.

2. If one were to understand the allegations raised by the de facto complainant against the accused as narrated by the learned Public Prosecutor, it can be summaried as follows:

An amount of Rs.20 lakhs was borrowed from the 1st accused by the de facto complainant. She had borrowed this amount not for herself; but on behalf of one Binoy. Accused 3,

4 and 5 were expected to repay the amount. That amount could not be repaid. When the 1st accused insisted on repayment, the de facto complainant entered into a transaction with the 2nd accused, who, in turn, advanced the amounts required by her to discharge the liability of the 1st accused. It is the case of the de facto complainant that accused 1 to 5 have acted as conspirators. They have extracted from her unconscionable rate of interest. Even though the initial loan amount was only Rs.20 lakhs and Rs.43 lakhs have already been repaid, the accused are demanding the return of an amount of Rs.38 lakhs still now. To enforce their claim for return of the money, the accused persons (A1 and A2) had allegedly gone to the house of the de facto complainant. The amount was demanded. She was threatened and intimidated on two occasions. Investigation is in progress. The petitioners apprehend imminent arrest. The 1st accused has already been enlarged on bail.

3. The learned counsel for the petitioners submits that the allegation of attempt to intimidate, threaten etc., to enforce repayment of the money is totally baseless and unsustainable.

Amounts are due from the de facto complainant and her attempt is to somehow wriggle out of the obligation. She has not chosen to place before the police the real state of affairs. The petitioners may, in these circumstances, be granted anticipatory bail, it is prayed.

4. The learned Public Prosecutor opposes the applications. The learned Public Prosecutor submits that unconscionable rate of interest has been levied from the de facto complainant. The de facto complainant has been defrauded by the accused. They have resorted to highhanded methods to enforce repayment of the amount. In these circumstances, the petitioners may not be granted anticipatory bail, it is prayed.

5. I have considered all the relevant inputs. The Case Diary has been perused by me. I shall scrupulously avoid any detailed discussions on merits about the acceptability of the allegations or the credibility of the data collected. Suffice it to say that, on an anxious consideration of all the relevant inputs, I am satisfied that this is a fit case where the petitioners can be granted anticipatory bail. In coming to this conclusion, I have

taken note of all the relevant inputs, including the nature of the very allegations raised in the First Information Statement.

6. In the result, these bail applications are allowed. Following directions are issued under Sec.438 of the Cr.P.C:

(i) The petitioners shall appear before the learned Magistrate having jurisdiction at 11 a.m. on 26/9/07. They shall be released on regular bail on their executing bonds for Rs.1,00,000/- (Rupees one lakh only) each with two solvent sureties each for the like sum to the satisfaction of the learned Magistrate.

(ii) The petitioners shall make themselves available for interrogation before the Investigating Officer between 10 a.m. and 3 p.m. on 27/9/07, 28/9/07 and 29/9/07 and thereafter on all Mondays and Fridays between 10 a.m. and 12 noon for a period of three months. Subsequently, they shall so make themselves available for interrogation before the Investigating Officer as and when directed by the Investigating Officer in writing to do so.

(iii) If the petitioners do not appear before the learned

Magistrate as directed in clause (i), directions issued above shall thereafter stand revoked and the police shall be at liberty to arrest the petitioners and deal with them in accordance with law as if these directions were not issued at all;

(iv) If the petitioners were arrested prior to their surrender on 26/9/07 as directed in clause (i) above, they shall be released on their executing bonds for Rs.25,000/- each without any sureties undertaking to appear before the learned Magistrate on 26/9/07.

Sd/-
(R. BASANT, JUDGE)

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P.S. to Judge